

STATE OF MICHIGAN
COURT OF APPEALS

SAMIR M. KHALIL,

Plaintiff-Appellant,

v

RELIANCE NATIONAL INDEMNITY, d/b/a
RELIANCE INSURANCE COMPANY,

Defendant,

and

DELPHI AUTOMOTIVE SYSTEMS,

Defendant-Appellee.

UNPUBLISHED

April 14, 2005

No. 251912

Oakland Circuit Court

LC No. 2002-037600-NF

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition for defendant Delphi Automotive Systems, MCR 2.116(C)(7), based on a release. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was involved in an automobile accident on May 18, 2000, and reached a settlement with Allstate Insurance Company, the insurer of the driver of the other vehicle involved in the accident. The settlement agreement contained the following release:

This indenture witnesseth that, in consideration of the sum of . . . (\$7531.00), receipt whereof is hereby acknowledged, for myself and for my heirs, personal representatives and assigns, I do hereby release and forever discharge Michael D. Henry, Michael D. L. Henry, & Allstate Insurance and any other person, firm or corporation charged or chargeable with responsibility or liability, their heirs, representatives and assigns, from any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of action, arising from any act or occurrence up to the present time and particularly on account of all personal injury, disability, property damage, loss or damages of any kind already sustained or that I may hereafter sustain in consequence of an accident

that occurred on or about the 18th day of May 2000, at or near Highway 31 and Markland, Kokomo, Ind.

* * *

I understand that the parties hereby released admit no liability of any sort by reason of said accident and that said payment and settlement in compromise is made to terminate further controversy respecting all claims for damages that I have heretofore asserted or that I or my personal representative might hereafter assert because of the said accident. . . .

Because plaintiff was driving a vehicle owned by Delphi at the time of the accident and Delphi is self-insured, plaintiff filed suit against Delphi for personal injury protection (PIP) benefits. Delphi subsequently moved for summary disposition, arguing that the above release barred plaintiff's claim. The trial court agreed and granted Delphi's motion.

This Court reviews a trial court's decision on summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition is appropriate under MCR 2.116(C)(7) when a plaintiff's action is barred by a release. A motion under MCR 2.116(C)(7) is governed by the following standards:

A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. [*Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).]

If the pleadings or other documentary evidence fail to establish a genuine issue of material fact, the court must decide as a matter of law whether the claim is barred. *Holmes v Michigan Capital Medical Center*, 242 Mich App 703, 706; 620 NW2d 319 (2000).

The law governing summary disposition based on a release has been summarized as follows:

"Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties. MCR 2.116(C)(7). A release of liability is valid if it is fairly and knowingly made. The scope of a release is governed by the intent of the parties as it is expressed in the release. [*Adell v Sommers, Schwartz, Silver & Schwartz, PC*, 170 Mich App 196, 201; 428 NW2d 26 (1988) (citations omitted).]

If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language of the release. The fact that the parties dispute the meaning of a release does not, in itself, establish

an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. If the terms of the release are unambiguous, contradictory inferences become 'subjective, and irrelevant,' and the legal effect of the language is a question of law to be resolved summarily. [*Gortney v Norfolk & W R Co*, 216 Mich App 535, 540-541; 549 NW2d 612 (1996) (citations omitted)]." [*Wyrembelski v City of St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996).]

"The scope of a release is controlled by the language of the release, and where . . . the language is unambiguous," it is construed as written. *Adair v State of Michigan*, 470 Mich 105, 127; 680 NW2d 386 (2004).

In this case, the release that plaintiff signed provides that plaintiff was releasing and forever discharging "any other person, firm or corporation charged or chargeable with responsibility or liability, . . . from any and all claims, demands, damages, costs, expenses, loss of services, actions and causes of action, arising from any act or occurrence up to the present time and particularly on account of all personal injury, disability, property damage, loss or damages of any kind" arising from the May 18, 2000, automobile accident. The plain and unambiguous language of the release bars plaintiff's action against Delphi. *Romska v Opper*, 234 Mich App 512; 594 NW2d 853 (1999).

Plaintiff argues that even if the release is broad enough to include Delphi, it should not be enforced as a matter of policy because Delphi was obligated by law to pay PIP benefits to plaintiff. We disagree. There is no provision in the no-fault act, MCL 500.3101 *et seq.*, that prevents a party from waiving rights to benefits under the act, and plaintiff has not cited any authority in support of his argument that such a rule should be imposed. Moreover, this Court has previously approved a release for no-fault benefits despite the argument that such a release should be void as against public policy. See *Lewis v Aetna Casualty & Surety Co*, 109 Mich App 136, 139; 311 NW2d 317 (1981). Additionally, in *Romska, supra* at 516, this Court noted that it was not aware of a rule in this state "that precludes settling parties from waiving *whatever rights they choose*." We therefore conclude that the trial court properly granted Delphi's motion for summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder